

CHAPTER 809  
Open Video Systems

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CROSS REFERENCES

- Cable television; franchising and regulation - see B.R. & T. Ch. 805
- Cable television; conflicts of interest - see B.R. & T. Ch. 806

809.01   PURPOSES.

The purposes of this chapter are as follows:

- (a) To provide procedures for the granting of nonexclusive franchises for constructing and operating Open Video Systems ("OVS") in the County, and for the transfer and renewal of such franchises;
- (b) To regulate the erection, construction, reconstruction, installation, maintenance, dismantling, testing, repair and use of OVSs in, upon, along, across, above, over or under or in any manner connected with, the streets public ways or public places within the jurisdiction of Loudoun County as now or in the future may exist;
- (c) To provide for the payment of fees and other valuable consideration to the County as compensation for the use of the public rights-of-way;
- (d) To provide conditions under which open video systems will serve present and future needs of the government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the County; and
- (e) To provide remedies and prescribe penalties and liquidated damages for any violation of this chapter and/or the terms and conditions of franchises granted pursuant hereto.  
(Ord. 2-21. Passed 6-17-02.)

809.02   TITLE.

This chapter is known and may be cited as the "Loudoun County Open Video System

Ordinance."  
(Ord. 2-21. Passed 6-17-02.)

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## 809.03 DEFINITIONS.

- (a) As used in this chapter all words and terms shall have the same meaning as those defined in Chapters 805 and 806 of the Loudoun County Code.
- (b) As used in this chapter:
- (1) "Cable service" means:
    - A. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
    - B. Subscriber interaction, if any, which is required for selection of such video programming or other programming service.
  - (2) "Open Video System" or "OVS" shall have the same meaning as Open Video System as deemed in Section 58.1-602 of the Code of Virginia.
  - (3) "Franchise" shall mean a non-exclusive authorization granted pursuant to this chapter to construct, operate, and maintain an OVS along the public rights-of-way to provide cable service within all or a specified area of the County. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the County as required by the ordinances and laws of the County, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along public rights-of-way.
  - (4) "Grantee" shall mean a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a franchise by the County.  
(Ord. 2-21. Passed 6-17-02.)

## 809.04 GENERAL PROVISIONS.

- (a) Scope of County's Authority. The County may grant one or more OVS franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this Chapter and Section 15.2-2108.1 of the Code of Virginia.
- (b) Chapter not a Contract. This chapter may be amended from time to time, and in no event shall this chapter or any of its provisions be considered a contract between the County and a grantee such that the County would be prohibited from amending any provision hereof.
- (c) Franchise Required. No person may construct or operate an OVS in the County without a franchise granted by the County. No person may be granted a franchise without having entered into a franchise agreement with the County pursuant to this chapter.
- (d) Rights Reserved to the County.
- (1) A grantee shall at all times be subject to and shall comply with all applicable Federal, State, and local laws. A grantee shall at all times be subject to all lawful

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exercise of the police power of the County, including without limitation all rights the County may have under 47 U.S.C. Section 552 and Sections 15.2-2108.1 and 15.2-403 of the Code of Virginia. Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, zoning, fees to be paid, or manner of construction, installation, operation, maintenance, or repair of system equipment.

- (2) No course of dealing between a grantee and the County, or any delay on the part of the County in exercising any of its rights, or any acquiescence by the County in the actions of a grantee that are in contravention of such rights (except to the extent such rights are expressly waived by the County) shall operate as a waiver of any such rights of the County.
- (3) The County shall have the maximum authority to regulate Open Video Systems, grantees, and franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a franchise agreement, they are reserved, whether expressly enumerated or not.
- (4) The County may, from time to time, issue such reasonable rules and regulations concerning Open Video Systems as are consistent with applicable law.

(e) Existing Open Video Systems. This chapter shall apply to all operators of Open Video Systems, including the operator of any OVS already under construction or offering services to residents of the County on the date this chapter is enacted. Any such existing operator shall submit an application pursuant to Section 809.05 within 150 days of the date of enactment. Failure of an existing operator to submit an application within the 150-day time-frame shall be grounds for denial of any subsequent application and an order of the County for the removal of any facilities installed by such operator in the public right-of-way. The County reserves the right to reject any such application and order the removal of any facilities installed by an applicant, if (i) the application fails to conform to the requirements of this chapter, or (ii) the applicant and the County are unable to agree on the terms of a franchise agreement.

(f) Compliance with Federal Law. OVS operators shall comply with all applicable provisions of federal law, including but not limited to 47 U.S.C. Section 573 and 47 C.F.R. Section 76.1505, as they may be amended.  
(Ord. 2-21. Passed 6-17-02.)

#### 809.05 FRANCHISE APPLICATION

(a) Application Required.

- (1) A written application shall be filed with the County for grant of an initial franchise.
- (2) To be acceptable for filing, a signed original of the application shall be submitted together with 12 copies. The application must be accompanied by any required application filing fee and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

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- (3) All applications accepted for filing shall be made available by the County for public inspection.
- (b) Application for Grant of an Initial Franchise.
  - (1) A person may apply for an initial franchise by submitting an application containing the information required in division (c) of this section. Upon receipt of such an application, the County will evaluate the application, conducting such investigations as it deems necessary.
  - (2) The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.
- (c) Contents of Application.
  - (1) An application for the grant of an initial franchise shall contain, at a minimum, the following information:
    - A. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with 5% or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and OVS ownership interest of each named person.
    - B. A demonstration of the applicant's technical ability to construct and/or operate the proposed OVS, including identification of key personnel.
    - C. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed OVS, including but not limited to a demonstration that the applicant meets the following criteria:
      - 1. A demonstration that the applicant has the necessary authority under State law to operate an OVS.
      - 2. A demonstration that the applicant has the necessary authority under Federal law to operate an OVS.
      - 3. A demonstration of the applicant's financial ability to complete the construction and operation of the OVS proposed.
    - D. A proposal for how the applicant would reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant proposes to provide support for public, educational, and governmental access, including channel capacity, facilities, or financial support to meet the community's needs and interests that is comparable to that being provided by a cable franchisee.
    - E. Identification of the area of the County to be served by the proposed OVS, including a description of the proposed franchise area's boundaries.
    - F. A detailed description of the physical facilities proposed.

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- G. Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.
  - H. Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this chapter.
  - I. Any additional information that the County may request of the applicant that is relevant to the County's consideration of the application.
  - J. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.
- (2) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this division (c).

(d) Application Fee. Applications shall be accompanied by an application fee of twenty-five thousand dollars (\$25,000.00) payable to the order of the "County of Loudoun," which amount shall be used by the County to offset actual expenses incurred in the franchising and evaluating procedures, including, but not limited to, staff time, overhead, materials and consulting services deemed necessary for evaluation of the application. At the conclusion of the review process, the County will refund to the applicant any portion of the application fee which is in excess of the actual costs incurred by the County in reviewing the application. If the County incurs more than twenty-five thousand dollars (\$25,000.00) in actual costs in reviewing the application, the applicant will reimburse the County for these additional costs up to a total fee not exceeding fifty thousand dollars (\$50,000.00).

(Ord. 2-21. Passed 6-17-02.)

#### 809.06 RIGHT-OF-WAY FEE.

(a) Fee in Lieu of Franchise Fee. In lieu of the franchise fee required by Section 805.04(h) of this Code, the operator of an OVS shall pay a fee on the gross revenues of the operator for the provision of cable service. The rate of this fee shall not exceed the rate imposed under Section 805.04(c). The fee, which shall be paid quarterly, shall be 5% of gross revenues, as defined in division (b) of this section.

(b) "Gross revenues" for the purpose of determining this fee shall mean all revenues received by an OVS operator or its affiliates, including all revenues received from subscribers, all carriage revenues received from unaffiliated video programming providers, and any advertising revenues received by the OVS operator or its affiliates in connection with the provision of cable service, where such revenues are included in the calculation of the incumbent cable operator's cable franchise fee. "Gross revenues" does not include revenues collected by unaffiliated video programming providers.

(c) Payment of the fee shall be due 30 days after the end of each quarter.

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(d) Any OVS operator operating in the County upon the effective date of this chapter shall become liable for right-of-way fees under division (a) of this section, beginning as of such effective date. Such fees shall accrue until the operator receives a franchise pursuant to this chapter, at which time the amount of the fees shall be computed and shall be payable in accordance with terms of the operator's franchise.

(Ord. 2-21. Passed 6-17-02.)

#### 809.07 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS REQUIREMENTS

Any franchise agreement between a grantee of a franchise under this chapter and the County shall require the grantee to provide support for public, educational and governmental access which is comparable to the support of public, educational and governmental access provided by any cable operator that has been granted a franchise pursuant to Chapter 805. Such support may include access channel capacity, services, facilities, equipment, and funding.

(Ord. 2-21. Passed 6-17-02.)

#### 809.08 TERM AND RENEWAL.

(a) Franchise Term. The term of a franchise shall be for the number of years negotiated in the franchise agreement with the County, unless terminated earlier in accordance with its terms or this chapter.

(b) Franchise Renewal. A franchise may be renewed upon the expiration of its term, under conditions and in accordance with procedures negotiated with the County and set forth in the franchise agreement. In determining whether a franchise should be renewed, the County shall consider (i) whether the OVS operator has complied with the terms of its existing franchise and with applicable law; (ii) the quality of the OVS operator's past services; (iii) the OVS operator's financial, legal, technical and other qualifications to provide the proposed services; (iv) whether the operator proposes to meet the community needs and interests related to the operator's system and services that have been identified by the County, including, without limitation, any rebuild or upgrade of the OVS; and (v) any other factors stated in the initial franchise agreement.

(Ord. 2-21. Passed 6-17-02.)

#### 809.09 ADDITIONAL REQUIREMENTS.

(a) Chapter 805 - Sections Applicable. To the extent not prohibited by Federal or State law, or addressed in this Chapter 809, OVS operators must comply with all the provisions of Chapter 805, including, without limitation: 805.04 (Requirements for Issuing New Cable Television Franchises); 805.05 (Transfers and Assignments); 805.06 (Liability and Indemnification); 805.07 (Cable System Construction); 805.08 (Regulations Pertaining to Use of County Streets and Public Rights-of-Way); 805.11 (Reports and Records of Cable TV Operation) with the exception of subsections (b) and (d); 805.14 (Letter of Credit); 805.15 (Liquidated Damages); 805.16 (Forfeiture and Termination); and 805.17 (Waivers).

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(b) Chapter 806. To the extent not prohibited by Federal or State law, OVS operators must comply with all the provisions of Chapter 806.

(c) Other Provisions. To the extent that any section of Chapter 805 is applicable, all references to other ordinances or laws in the applicable sections shall also be applicable to OVS operators, including, by way of example and not limitation, County zoning ordinances and permitting regulations.

(d) Chapter 805 - Sections Not Applicable. OVS operators shall not be required to comply with the following sections of Chapter 805: 805.04(h)(1) [Franchise Fee]; 805.12 (Rate Regulation); and 805.13 (Franchise Renewal Process).  
(Ord. 2-21. Passed 6-17-02.)

#### 809.10 SUNDRY PROVISIONS.

(a) Every direction, notice or order by the County to be served upon a grantee shall be delivered or sent by registered mail to the office specified in the franchise agreement. Every notice served upon the County shall be delivered or sent by first class mail to the County Administrator, Loudoun County, Virginia.

(b) All provisions of this chapter shall apply to a grantee, its successors, and assignees, as may be approved by the County Board of Supervisors in accordance with this chapter.

(c) The rights granted by this chapter are subject to all franchises and permits heretofore or hereafter granted by the Board of Supervisors to use the streets of the County or by other public utilities, public service corporations, cable operators, or telecommunications providers. It is not intended by the grant of a franchise to abridge the exercise of the police power heretofore or hereafter granted to the County by the State. The grant of a franchise is subject to all ordinances and resolutions of, or agreements adopted by, the Board of Supervisors of the County, as the same now exist or may be hereafter amended, revised, or codified, in the lawful exercise of any other power granted to the County.

(d) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(e) If any particular section of this chapter, or the particular application thereof, including any applicable section of Chapters 805 or Chapter 806, shall be held invalid, the remaining provisions, and their application, shall not be affected thereby.

(f) A grantee, upon its acceptance of a franchise, shall be bound by the provisions of this chapter, all responses, statements and all matters agreed upon in a franchise agreement.

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(g) A grantee shall assume the cost of any public notice required by law.

(h) In the event that any provision of the Communications Act of 1934, as amended, or any other statute, law or regulation, which is relied on herein or in any agreement for any definition or requirement, is repealed, then the language of such provision at the time of such repeal shall nevertheless continue to apply for the purposes of this chapter or any agreement, regardless of such repeal, except as otherwise provided herein or in any agreement or as prohibited by such subsequent repeal or amendment.

(i) The rights and remedies reserved to the County by this chapter are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the County may have with respect to the subject matter of this chapter. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time. The failure of the County to take any action in the event of a material breach by a grantee shall not be construed or otherwise be deemed to constitute a waiver of the right of the County to take such an action at any other time in the event that said material breach has been cured, or with respect to any other material breach by a grantee.

(j) In the event that, after the effective date of this chapter, any court, agency, commission, legislative body, or other authority of competent jurisdiction declares this chapter invalid, in whole or in part, the portion of this chapter which is not held to be invalid shall continue in full force and effect.

(k) In the event that, after the effective date of the chapter, any court, agency, commission, legislative body, or other authority of competent jurisdiction declares or requires the grantee to (1) perform an act which is inconsistent with any provision of this chapter, or (2) cease performing any act required by any provision of this chapter and the grantee intends to exercise its rights pursuant to such declaration, the grantee shall so notify the County of said declaration or requirement.

(l) The headings contained in the chapter and any agreements are to facilitate reference only, do not form a part of the chapter or an agreement, and shall not in any way affect the construction or interpretation hereof.

(Ord. 2-21. Passed 6-17-02.)

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